

QWULOOLT ESTUARY RESTORATION PERIMETER PLANTING CONSULTANT CONTRACT

THIS CONTRACT is between the Tulalip Tribes, hereinafter "Tribes", 6406 Totem Beach Rd., Tulalip, WA 98271 and Stilly-Snohomish Fisheries Enhancement Task Force, hereinafter "Consultant", located at P.O. Box 5006, Everett WA, 98206.

- 1. EFFECTIVE DATE:** This contract shall be effective once executed by all parties to this contract.
- 2. TERM:** The term of this contract shall expire on December 31, 2012. This contract term may be extended by mutual written agreement of both parties.
- 3. SCOPE OF WORK:** The scope of work under this Contract shall be, at the direction of the Contract Officer, to complete the following plan:

COMPLETE THE FIRST YEAR AND A HALF OF PERIMETER PLANTING ACTIVITIES ON THE QWULOOLT ESTUARY RESTORATION PROJECT. THESE ACTIVITIES WILL INCORPORATE THE USE OF VOLUNTEERS AND PROVIDE EDUCATION AND OUTREACH TO THE LOCAL COMMUNITY

The scope of work for services to be completed by the Consultant is more fully set forth in **Exhibit A**, which is incorporated as a part of this contract.

- 4. CONTRACT OFFICER:** The Contract Officer for the Tribes shall be Kurt Nelson, Environmental Division Manager with the Tulalip Tribes Natural and Cultural Resources Department. The Contract Officer shall be responsible for directing the work of the Consultant on behalf of the Tribes. The Contract Officer shall authorize all work by the Consultant under this Contract. No payment for services or expenses shall be made to Consultant without authorization by the Contract Officer.

The Contract Officer may designate staff representatives to confer with Consultant relative to services under the terms of this contract. The work in progress will be reviewed from time to time as set forth in **Exhibit A**, or by The Contract Officer or on the request of the Consultant.

- 5. FEES AND PAYMENT:** Payment for the Consultant services shall be made according to the rates set forth in **Exhibit B**. Total payment for fees and expenses shall not exceed \$193,264.

Payment is subject to the Consultant submitting invoices documenting all hours expended under this contract by the Consultant's personnel. Reimbursable expenses shall be subject to approval by Contracting Officer. Consultant shall provide documentation and receipts for all claimed expenses.

Payment to the Consultant shall be due not later than 30 (thirty) days after receipt of invoice. Acceptance of final payment by the Consultant constitutes a waiver of all claims by the Consultant. Consultant expenses and fees will be submitted on a monthly or quarterly basis. Such statements must give a detail of

time worked by each class of employee and the expenses incurred for which billing is made.

6. SCHEDULE OF WORK: On approval of this agreement, the Contracting Officer will issue a notice to proceed with the work. The Consultant must utilize their best efforts in the prosecution of the work pursuant to the Scope of Work. Work shall be completed according to the timelines set forth in **Exhibit A**. Such timelines are subject to changes pursuant to Notice from the Contract Officer to the Consultant, or as mutually agreed by the parties.

7. WORK CHANGES: The Contracting Officer may order changes in scope or character of the work, either decreasing or increasing the amount of the Consultant's services. In the event that such changes are ordered, the Consultant will be entitled to full compensation for all work performed prior to receipt of notice of change. Increased compensation for changes must be authorized in writing by the Tribes.

In the event the Consultant is delayed in the performance of their services by circumstances beyond the Consultant's control, the Consultant will be granted a reasonable adjustment in the timelines as described in **Exhibit A**. All claims for adjustments in the schedule of completion must be submitted to Tribes by the Consultant within 3 days of the time of occurrence of the circumstances necessitating the adjustment.

The Consultant shall not undertake any work beyond the scope of this agreement unless such additional work is approved in advance and in writing by Tribes.

8. STANDARD OF CARE. The Consultant shall perform its services in accordance with generally accepted standards presently maintained by other professionals engaged in the same type of work in Washington.

9. COMPLETION/TERMINATION. This Agreement shall remain in force until completion and acceptance of the services or until terminated hereunder. Either party may terminate this Agreement for any reason by providing at least thirty (30) days prior written notice to the other party, provided that either party may terminate this Agreement with seven (7) days' prior written notice if the other party fails substantially to perform its obligations under this Agreement. In the event of termination, the Consultant shall be paid in accordance with the compensation terms of this Agreement for services provided in accordance with the scope of services up to the date of termination.

Upon termination, the Consultant shall promptly deliver to Tribes all materials, documents, data or work product produced by or in the possession of the Consultant that relate to work performed under this Contract. All work performed by the Consultant under this Contract shall be the property of the Tribes. The Consultant shall be permitted to retain copies, including reproducible copies of drawings and specifications for information, reference, and use in connection with the Consultant's endeavors. The Consultant shall not be responsible for any use of the said documents, drawings, specifications or other materials by the Tribes on any project other than the project specified in this Agreement.

10. INSURANCE. The Consultant will maintain the following levels of insurance during the term of this Agreement. The Tribes will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

- a. Worker's Compensation (and Employer's Liability Insurance)--as required by applicable state statute.
- b. Commercial General Liability--\$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate.
- c. Automobile Liability--minimum of \$1,000,000 combined single limit for bodily injury and property damage.
- d. Professional Liability (E&O) --\$1,000,000 each claim and in the aggregate.

11. INDEMNIFICATION/HOLD HARMLESS. The Tribes and Consultant each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions in services provided pursuant to this Contract. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the Tribes and the Consultant, they shall be borne by each party in proportion to its negligence.

12. RECORD KEEPING: The Consultant agrees to maintain for inspection by Tribes for three (3) years after final payment for all books, records, documents and other evidence pertaining to the costs and expenses of this contract.

13. WORK PRODUCT: Any and all reports, data, findings, under this contract shall become the property of and remain under the sole proprietorship of Tribes. The Consultant will not release or disclose any information or documents obtained or developed as a result of performing work under this contract, either orally or in writing, unless expressly approved in writing by the Tribes.

14. SUCCESSOR BOUND: Tribes and the Consultant each bind themselves and their partners, agents, assigns, successors and legal representatives of such other party to this contract and to the partners, successors, and legal representatives of such other party with respect to all terms and conditions of this contract, subject to appropriate federal law and regulations.

15. NON-ASSIGNABILITY: This is a personal services contract and the obligations of either party may not be assigned or otherwise transferred in whole or in part without prior written authorization from the Tribes.

16. INDEPENDENT CONTRACTOR: The Consultant is an independent contractor and not an employee of the Tribes. The Consultant is and shall be responsible for and hold Tribes harmless from payment of all applicable taxes, fees or other payments required to be paid to any government by the Consultant as a result of payments by Tribes to the Consultant under this contract.

17. INTEGRATION: This agreement document represents the entire and complete agreement of the parties and supercedes all negotiations and representations, either written or oral. This contract may be amended or modified only in writing as agreed to by both parties.

18. COMPLIANCE WITH APPLICABLE LAWS: The Consultant shall abide by all applicable laws and regulations in his performance of work by obtaining all required applicable licenses, permits or other governmental authorizations necessary for said performance.

19. INDIAN / TRIBAL PREFERENCE: The Consultant shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, national origin or handicap, with regard to employment. For work performed under this contract, the Consultant shall comply with applicable provisions of the Tribal Employment Rights Ordinance, #60.

20. NOTICE OF LEGAL PROCEEDINGS: The Consultant shall promptly notify Tribes of any litigation arising from or affecting its operations under this contract, including any bankruptcy or insolvency proceedings of the Consultant or of its assignees or subcontractors. The Consultant shall not assign his rights under this contract without first obtaining Tribes' written approval.

21. LIMITATION ON LIABILITY: The Consultant hereby acknowledges and agrees that it shall not be entitled to payment for services or otherwise including damages in excess of the fee amount specified in this contract.

22. BREACH; REMEDIES: Tribes may immediately suspend work under this contract upon delivery to the Consultant of a written notice of breach. Suspension shall continue until Tribes' authorized representative certifies in writing that the breach is remedied. If in the sole opinion of the Contracting Officer, the Consultant remains in breach after seven (7) days from the notice of suspension, Tribes may terminate this contract without further notice. Any failure by Tribes to suspend or terminate this contract in case of breach shall not waive the Consultant's duty to perform. Failure by the Consultant to perform on his part any duty, term or condition, herein shall constitute a breach. Failure of Tribes to assert any claim or right at any time under this contract shall not waive its right to assert any claim or right at a later time.

23. NOTICE: All notices required by this contract shall be in writing and shall not be effective unless delivered personally or via U.S. mail, to the individuals identified as follows:


Kristin Marshall, Habitat Restoration Project Manager, P.O. Box 5006, Everett, WA. 98206

Kurt Nelson, Environmental Division Manager, Tulalip Tribes, 6406 Marine Drive, Tulalip, WA 98271

24. APPLICABLE LAW: The parties agree that the laws of the Tribes shall apply to the interpretation and enforcement of this contract. Nothing in this contract constitutes or shall be construed as a waiver of sovereign immunity of the Tribes, its subordinate entities officers, directors or employees.

 DATE 06/02/11
John Anderson, Executive Director

Stilly-Snohomish Fisheries Enhancement Task Force

 DATE 6/3/2011
Andy Loch, Board President
Stilly-Snohomish Fisheries Enhancement Task Force

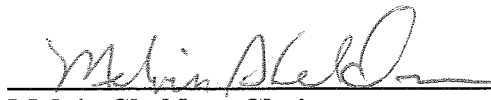
 DATE _____
Melvin Sheldon, Chairman
The Tulalip Tribes of Washington

EXHIBIT A

QWULOOLT ESTUARY RESTORATION PERIMETER PLANTING PROJECT SCOPE OF WORK

Stilly-Snohomish Fisheries Enhancement Task Force. Contract #

PUPROSE

The Tulalip Tribes of Washington are requesting the services of a qualified 501(c)(3) not-for-profit corporation, which focuses on performing wetland and riparian restoration using volunteers and providing public education and outreach to assist the Tribes Environmental Department in the planting the perimeter of the Qwuloolt Estuary Restoration project in Marysville, Washington. The tasks under this scope of work focus on (1) project management, (2) site preparation and planting of 9.6 acres as described in the Perimeter Planting Plan, plan sheets 2, 6-8, and portions of 3 and 5, and (3) education and outreach.

BACKGROUND

The Qwuloolt Estuary Restoration Project, located adjacent to Ebey Slough in the City of Marysville, is being overseen by the Trustees, which consist of the Tulalip Tribes of Washington, the National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service (USFWS), and the Washington Department of Ecology (Ecology). The mandate of the Trustees, and the purpose of this project, is to restore degraded habitat in the estuary to a condition that is similar to the types of habitats historically found at the Tulalip Landfill site.

The Qwuloolt Estuary Restoration project proposes to restore a natural daily tidal hydrology to approximately 360 acres of existing, degraded wetland. Major elements of the project include:

- Constructing a new levee along the western portion of the site.
- Constructing new channel segments.
- Filling existing linear ditches and placing fill on the wetland surface.
- Excavating a breach in the existing levee along Ebey Slough.
- Constructing a water quality treatment wetland for the existing industrial area.
- Planting the project boundary and constructed berms within the project site

The Stilly-Snohomish Fisheries Enhancement Task Force has been involved in the restoration of salmon populations and their habitats and public outreach since 1990. The work performed by the Task Force integrates volunteers and involves the local community. They have an active working relationship the City of Marysville and the local school district. This contract includes actions focused on perimeter planting and invasive vegetation control. The work will be accomplished through the following tasks.

TASK 1. Site Preparation and Erosion Control (Cost: \$45,950)

Site preparation may include mechanical and/or chemical control of non-native invasive vegetation (blackberry and reed canarygrass). Non-native invasive vegetation will be mowed using hand tools, walk-behind field mowers and brush cutters, and tractor or bobcat mowers as conditions allow.

Blackberry canes and other reed canarygrass plant material cut/mowed during site preparation will be laid on the ground to dry out. Unintentional mechanical removal of existing native vegetation (salmonberry, etc...) will be minimized. Existing native vegetation or installed ornamental vegetation will not be disturbed. Resprouting invasive vegetation will be spot-sprayed using backpack sprayers in late summer. Herbicide drift onto desirable vegetation will be minimized and chemical control will not occur in areas where potable water intakes or irrigation sources are located.

Following site preparation, bare areas with risk of erosion or re-invasion by invasive weeds will be seeded with a "slopeholder" seed mix or native seed mix, mulched, or straw will be applied. Coir or jute erosion control geotextile will be used as necessary to reduce risk of erosion.

TASK 2. Planting (Cost: \$77,450)

Planting will generally occur in October – May, but may occur to a limited degree during other months where conditions allow. Mulch may be placed around plants to increase soil moisture retention and suppress weeds. The Design Memo (Attachment 1) will be used as a guide for developing plant lists, but species composition, density, and planting techniques will be negotiated by Tulalip Tribes and Stilly-Snohomish Fisheries prior to planting activities. Volunteer work parties will be coordinated by Stilly-Snohomish Fisheries Enhancement Task Force staff to complete planting at appropriate work areas (see "Community Engagement" section).

TASK 3. Planting Site Maintenance (Cost: \$32,000)

Site maintenance may include mechanical and/or chemical control (spot-treatment) of non-native invasive vegetation (blackberry, reed canarygrass). Stilly-Snohomish Fisheries Enhancement Task Force generally recommends three years of maintenance following planting; however under this contract maintenance only covers the contract period. Site maintenance will occur May – October. All planted areas will be maintained.

TASK 4. Education and Outreach (Cost: \$13,000)

Stilly-Snohomish Fisheries will utilize community engagement programs to provide outreach and education to community members and accomplish planting and site maintenance activities through weekday and weekend volunteer events. Stilly-Snohomish Fisheries works with an average of 1,500 to 2,200 volunteers annually and has a proven track record of citizen engagement through volunteer events, student and adult education, and community outreach.

Volunteer participation

Targeted volunteer involvement campaigns will be focused on the adjacent community and Tulalip Tribal members. Tribal members and adjacent landowners will be invited to participate in volunteer planting events, maintenance work parties, and Open House events. Stilly-Snohomish Fisheries coordinate all volunteer activities, and will provide L & I medical/workers compensation to all registered volunteers. Registered volunteers will sign a release that holds harmless Tulalip Tribes and City of Marysville for all activities completed as a volunteer with Stilly-Snohomish Fisheries.

Volunteer involvement provides an excellent opportunity for exposure to Tulalip Tribes, the Qwuloolt Estuary Restoration Project, and the project funders through the use of Media Releases and newspaper articles, radio announcements, project information on volunteer recruitment sites and partner websites

and email list serves, on-site education of volunteers, and the organizational website and email list serve. Stilly-Snohomish Fisheries will provide volunteer involvement documentation for match purposes – volunteer labor can provide valuable matching contributions to state and Federal grant funds. The Qwuloolt Estuary Restoration Perimeter Planting Project has several work areas where volunteer involvement could be incorporated into project activities. Work areas suitable for volunteer work parties will be identified and logistics arranged by Stilly-Snohomish Fisheries as requested by Tulalip Tribes.

Adjacent landowner participation

Stilly-Snohomish Fisheries will also target the surrounding community and provide neighborhood outreach in the form of mailings, targeted volunteer events for the neighborhood, door-to-door-outreach, and “open house” events where neighbors are invited to visit the site and interact with Tulalip Tribes and Stilly-Snohomish Fisheries staff and view ongoing work and plans for future work.

Student Education

Stilly-Snohomish Fisheries Enhancement Task Force has a 6-year relationship with Marysville School District and teachers in the District. This relationship represents an opportunity for student involvement in the Qwuloolt Estuary Restoration Perimeter Planting Project. Stilly-Snohomish Fisheries educators will advertize the educational programs to schools within the Marysville School District, including Tribal schools such as Tulalip Elementary and Tulalip Heritage School, and the NW Indian College satellite classrooms. First priority in outreach will be given to the aforementioned Tribal schools; however programs offered will be based on teacher interest and the level of Tribal school participation. Stilly-Snohomish Fisheries will begin working with classrooms during the 2011-2012 school year. Work under this contract will include a package of 2 in-class lessons and one service-learning field trip for 8 classrooms.

TASK 5. Project Administration (Cost: \$24,864)

This task includes the oversight or direction of project personnel, activities and procurement and ongoing communication between the Stilly-Snohomish Fisheries Enhancement Task Force and the Tulalip Tribes in addition to the production of monthly invoices. These invoices will also include a summary of work performed during the invoicing period.

EXHIBIT B

QWULOOLT ESTUARY RESTORATION PERIMETER PLANTING PROJECT

Budget Outline

Stilly-Snohomish Fisheries Enhancement Task Force Contract #

Budget for Qwuloolt Estuary Restoration Perimeter Planting Project

<u>Task List</u>	<u>Cost</u>
Task 1 Site Preparation and Erosion Control	\$45,950
Task 2 Planting	\$77,450
Task 3 Planting Site Maintenance	\$32,000
Task 4 Education and Outreach	\$13,000
Task 5 Project Administration	\$24,864
Total Direct Charges	\$193,264
Total Project Cost	\$193,264